

Plaintiffs' Exhibit Y

MARGARET McCARTHY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SIERRA BOUCHER, LILY ENGBRECHT,
NATASSIA TUHOVAK, HANNAH WHELAN, and
CASSIDY WOOD,

Plaintiffs,

- against -

Case No.

1:22-cv-00381-CCR

TRUSTEES OF CANISIUS COLLEGE,

Defendant.

Examination before trial of **MARGARET
McCARTHY**, taken pursuant to the Federal Rules of
Civil Procedure, in the offices of JACK W. HUNT &
ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
New York, on September 27, 2024, commencing at
10:25 a.m., before LORI K. BECK, CSR, CM, Notary
Public.

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10:40:52 1 Q. Okay. And then as the chair of the
10:40:56 2 ABEC program, Dr. Noonan was responsible for
10:41:00 3 submitting to you a budget for that program?

10:41:04 4 A. The budgets went through the deans, and
10:41:07 5 the deans recommended the budgets.

10:41:08 6 And there was a -- the college budget-wide
10:41:12 7 committee that finalized budgets for the college,
10:41:19 8 then approved by the board of trustees.

10:41:22 9 It was quite a long process.

10:41:23 10 Q. It sounds like it.

10:41:25 11 Did complaints from ABEC department faculty
10:41:30 12 ever reach you when you -- when you were in the
10:41:32 13 position of vice-president of academic affairs
10:41:35 14 regarding the allocation of funds within the ABEC
10:41:38 15 program?

10:41:43 16 A. I recall a concern by -- I think it was
10:41:47 17 Dr. Malini Suchak about the -- there's also
10:41:53 18 within -- within ABEC, there's an institute for the
10:41:56 19 study of human-animal relations, generally known as
10:42:01 20 ISHAR. We just refer to it as ISHAR by its
10:42:04 21 initials, I-S-H-A-R.

10:42:07 22 I believe I -- I recall Dr. Suchak reaching
10:42:11 23 out to the dean, who was Dr. Beth Gill, G-I-L-L, at

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10:42:19 1 the time, and Dr. Gill bringing to me the concern
10:42:22 2 that Dr. Suchak had about ISHAR funds, that they
10:42:27 3 weren't being fairly distributed or -- or that
10:42:32 4 they're -- I'm sorry, I'm going to take that back
10:42:34 5 for a second.

10:42:35 6 I think the concern was more that they were
10:42:37 7 being misappropriated. She had a concern that they
10:42:41 8 were being misspent.

10:42:43 9 Q. Dr. Suchak was concerned that
10:42:44 10 Dr. Noonan was misappropriating funds from the
10:42:48 11 ISHAR fund, correct?

10:42:50 12 A. That's it. That was the complaint.

10:42:52 13 Q. And did you ever direct Dr. Gill to
10:42:58 14 remedy that complaint?

10:43:00 15 A. I did more than that. I asked the
10:43:01 16 controller to review the account, controller of the
10:43:06 17 institution. I watched it myself, but I also asked
10:43:08 18 the controller to please review it.

10:43:10 19 I know he asked for receipts, and I don't
10:43:14 20 recall ever receiving any information back from him
10:43:17 21 that there was a problem.

10:43:24 22 Q. To your knowledge, did any other ABEC
10:43:26 23 program faculty members complain about the

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12:52:15 1 Q. So were you -- were you informed by
12:52:29 2 Dr. Gill that the concern about favoritism had to
12:52:32 3 do with Dr. Noonan repeatedly taking certain
12:52:37 4 trips -- certain students on trips?

12:52:40 5 MR. D'ANTONIO: Objection to the form.

12:52:42 6 THE WITNESS: No.

12:52:43 7 BY MS. NANAU:

12:52:43 8 Q. Okay. I don't think I have any more
12:53:01 9 questions for you about this Exhibit, so we can
12:53:03 10 move on.

12:53:28 11 Did there come a time when a decision was
12:53:32 12 made regarding Dr. Noonan's future at Canisius?

12:53:40 13 A. Yes.

12:53:41 14 Q. And who made that decision?

12:53:42 15 A. The president, ultimately, and I.

12:53:53 16 Q. What was the decision that you and
12:53:56 17 President Hurley reached with regard to Dr. Noonan
12:53:59 18 in the wake of Ms. Walleshauser's investigation?

12:54:04 19 A. That we needed to separate from the --
12:54:07 20 we needed to separate him from the institution.

12:54:14 21 Q. And who conveyed that decision to
12:54:15 22 Dr. Noonan, do you know?

12:54:19 23 A. His attorney, I believe.

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12:54:20 1 Q. Okay. So after you and President
12:54:26 2 Hurley made the decision to terminate Dr. Noonan's
12:54:31 3 employment with Canisius, were the discussions
12:54:34 4 largely between attorneys?

12:54:38 5 A. Yes.

12:54:40 6 Q. Okay. There came a time when Canisius
12:54:44 7 executed a settlement agreement with Dr. Noonan,
12:54:47 8 correct?

12:54:48 9 A. Yes.

10 The following was marked for Identification:

11 PLF. EXH. 78 Separation Agreement,
12 Confidentiality Agreement
13 and Release, Bates numbers
14 Canisius04956 through
15 Canisius04966

12:55:26 16

12:55:26 17 BY MS. NANAU:

12:55:26 18 Q. So, Dr. McCarthy, I show you what's
12:55:28 19 been marked as Plaintiffs' 78. It's a document
12:55:33 20 with the Bates-stamp range Canisius 4956 to 4966.

12:55:39 21 Do you recognize this document?

12:55:40 22 A. Yes.

12:55:41 23 Q. You've seen it before?

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12:55:42 1 **A.** Yes.

12:55:42 2 **Q.** This is the settlement agreement that
12:55:44 3 Canisius entered into with Dr. Noonan in May of
12:55:49 4 2019, correct?

12:55:50 5 **A.** Yes.

12:55:53 6 **Q.** Did Dr. Noonan require, to sign this
12:55:57 7 agreement, that his termination of employment would
12:56:00 8 be called a retirement?

12:56:02 9 **MR. D'ANTONIO:** Do you want her to read the
12:56:04 10 document before you ask her questions here?

12:56:06 11 **MS. NANAU:** Well, I'm wondering --

12:56:09 12 **BY MS. NANAU:**

12:56:09 13 **Q.** Do you -- are you aware of the contents
12:56:11 14 of this document?

12:56:12 15 **A.** It would help just to review it
12:56:14 16 quickly, if you don't mind.

12:56:14 17 **Q.** Please, yes.

12:56:14 18 **A.** I don't think I need to read it word
12:56:16 19 for word.

12:56:18 20 **MR. D'ANTONIO:** Then you can ask more
12:56:20 21 questions.

12:56:21 22 **MS. NANAU:** I assumed more knowledge.

12:56:26 23 **THE WITNESS:** Just to refresh.

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12:56:27 1 (Off the record: 12:56 p.m.)

12:59:37 2 (On the record: 12:59 p.m.)

12:59:38 3 **BY MS. NANAU:**

12:59:38 4 **Q.** So, Dr. McCarthy, you've had an
12:59:40 5 opportunity to review Plaintiffs' 78, correct?

12:59:43 6 **A.** Yes.

12:59:44 7 **Q.** So my question is this:

12:59:45 8 Did Dr. Noonan require that his termination
12:59:48 9 of employment would be articulated to the Canisius
12:59:55 10 community as a retirement?

12:59:59 11 **A.** The specific terms were negotiated by
13:00:02 12 the attorneys, attorney-to-attorney. I was not in
13:00:04 13 those conversations, so I really can't say.

13:00:07 14 It's here in the document.

13:00:08 15 **Q.** Okay. So I guess Canisius -- or let me
13:00:13 16 take it -- let me strike that.

13:00:15 17 You are not aware of any specific demands
13:00:20 18 that Dr. Noonan raised to enter into the separation
13:00:24 19 agreement with Canisius?

13:00:27 20 **A.** If I -- any -- any specific demands I
13:00:30 21 would have heard would have come to me from our
13:00:33 22 attorney and been privileged.

13:00:36 23 **Q.** Well --

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13:00:37 1 **A.** Unless I'm misunderstanding your
13:00:38 2 question.

13:00:39 3 **Q.** So -- so privilege is -- covers
13:00:42 4 communications with the attorney but not the facts,
13:00:47 5 right?

13:00:47 6 **A.** I thought -- I'm sorry, would you
13:00:48 7 repeat the question? I thought you said was I --

13:00:48 8 **Q.** Sure.

13:00:51 9 **A.** -- aware of any specific --

13:00:54 10 **Q.** Sure. Were you aware of any specific
13:00:57 11 demands, right, that Dr. Noonan raised to enter
13:00:59 12 into this agreement with Canisius?

13:01:01 13 That's what I'm wondering, if you have any
13:01:04 14 understanding of those demands.

13:01:10 15 **MR. D'ANTONIO:** So let me just -- before --
13:01:12 16 before she answers, let me just interpose a caution
13:01:16 17 here.

13:01:17 18 **MS. NANAU:** Okay.

13:01:18 19 **MR. D'ANTONIO:** To the extent that -- that
13:01:22 20 there were specific demands that were made during
13:01:27 21 the negotiations, we would have discussed them in
13:01:33 22 terms of what the college could or should have done
13:01:37 23 in response to those and what the objectives of the

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13:01:41 1 institution were, and those would be privileged
13:01:44 2 communications, so --

13:01:46 3 **MS. NANAU:** The discussion among you and
13:01:48 4 Canisius, correct?

13:01:48 5 **MR. D'ANTONIO:** Yes, absolutely.

13:01:50 6 **MS. NANAU:** Right.

13:01:50 7 **MR. D'ANTONIO:** Exactly right.

13:01:51 8 **MS. NANAU:** Okay. I understand that
13:01:53 9 carve-out.

13:01:54 10 **MR. D'ANTONIO:** So -- so if the question is
13:01:56 11 did I talk with Dr. McCarthy and give her a list of
13:02:01 12 demands, you know, I'll let her answer that
13:02:03 13 question.

13:02:03 14 **MS. NANAU:** Okay.

13:02:04 15 **MR. D'ANTONIO:** But -- but beyond that, kind
13:02:06 16 of what was the strategy and all of that --

13:02:08 17 **MS. NANAU:** That, I understand, is
13:02:09 18 privileged.

13:02:09 19 **MR. D'ANTONIO:** Okay. Fair enough.

13:02:10 20 **MS. NANAU:** This is -- I'm trying to --

13:02:12 21 **MR. D'ANTONIO:** I understand.

13:02:13 22 **MS. NANAU:** I'm trying to really, you know,
13:02:15 23 not tread on attorney-client communications here,

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13:02:19 1 but I do believe that I am entitled to understand
13:02:21 2 the framework for this negotiation, right?

13:02:24 3 **MR. D'ANTONIO:** If it was -- if it was
13:02:26 4 shared, you know, as these are the demands.

13:02:30 5 **MS. NANAU:** Yes.

13:02:31 6 **THE WITNESS:** But if that list comes from
13:02:32 7 you, then it's not privileged?

13:02:34 8 **MR. D'ANTONIO:** Well, if the list -- the
13:02:36 9 list itself -- in other words, if I ticked off for
13:02:40 10 you here are ten things Dr. Noonan wanted -- and
13:02:44 11 I'm not suggesting that I did do that, but if I
13:02:47 12 did, Daniela's entitled to it. I'll let you answer
13:02:52 13 that question.

13:02:53 14 But if it's here's the demands and what we
13:02:56 15 should do strategy-wise --

13:02:58 16 **THE WITNESS:** Okay.

13:02:59 17 **MR. D'ANTONIO:** -- or any discussions that
13:03:02 18 you and the president and I would have had --

13:03:02 19 **THE WITNESS:** Then it doesn't --

13:03:03 20 **MR. D'ANTONIO:** -- that's privileged.

13:03:04 21 **THE WITNESS:** Okay.

13:03:04 22 **BY MS. NANAU:**

13:03:06 23 **Q.** Do you understand the distinction?

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